

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

FERNANDO AMADOR PARES
DEBTOR

CASE NO. 21-01345 (ESL)
CHAPTER 13

RESPONSE TO DEBTOR'S OBJECTION TO CLAIM NO. 7 AND
OBJECTION TO DEBTOR'S AMENDED CHAPTER 13 PAYMENT PLAN

TO THE HONORABLE COURT:

BANCO POPULAR DE PUERTO RICO ("Banco Popular"), through its undersigned counsel, very respectfully alleges, states, and prays:

1. On June 14th, 2021, BPPR filed a claim for a secured mortgage note in the above-referenced matter. See Claim No. 7.
2. On August 11th, 2021, Debtor filed an *Objection to Proof of Claim No. 7*, and request for modification of the agreed-upon mortgage terms, including the pre- and post-interest amount and other charges included, with the Proof of Claim filed. See Dkt. No. 62.
3. After such filing, on September 28, 2021, the parties submitted a *Joint Motion requesting an Extension of Time* to conclude negotiations regarding the response. See Dkt. No. 75. Such request was granted on September 29, 2021. See Dkt. No. 76.
4. The parties are still discussing options for a possible settlement of the matter but have not reached a final resolution.
5. Notwithstanding, Banco Popular hereby responds to the *Debtor's Objection to Proof of Claim No. 7*, see Dkt. No. 62, and objects to the Debtor's *Amended Chapter 13 Payment Plan*, dated August 26, 2021. See Dkt. No. 71.

6. In his *Objection*, Debtor alleges that Banco Popular's rights as per the mortgage's terms and matter of payment are susceptible to modification by a Chapter 13 Plan pursuant to 11 USC § 1322, which permits modifications to secured claims, other than those secured only by security interest in real property, that is debtor's principal residence and which interest concludes during the life of the plan. See Dkt. No. 62.¹

7. As such, Debtor proposes to modify the existing and enforceable mortgage principal from an interest rate of 7.625%, to the prime rate plus formula consisting of 3.25% plus a 1.75% to account for the risk associated with nonpayment, for a total of 5%. In support of his position, Debtor attaches an amortization chart as an example of how paying the \$81,809 principal stated by Banco Popular in Claim No. 7, at a 5% rate for 60 months, with a monthly payment of \$1543.84, can satisfy the principal owed on the mortgage. See Dkt. No. 62, Exhibit 2.

8. Banco Popular hereby respectfully objects to the *Amended Chapter 13 Plan* submitted on August 26, 2021, see Dkt. No. 71, and opposes the objection and modification proposed by Debtor.

9. First, Banco Popular objects to the modification of its secured mortgage security interest as agreed-upon by the parties at the time of its execution. The modification proposed fails the tests provided by *In re Till* and *In re Ibarra*.

10. Second, Debtor's proposed *Amended Chapter 13 Plan*, which received an unfavorable recommendation from the Trustee on October 28, 2021, see Dkt. No. 88, fails to explain how Debtor, who has not issued a monthly mortgage payment of \$881.36 to Banco Popular for 105 months, will now be able to make a monthly mortgage payment of \$1543.84. Particularly, when

¹ For these purposes, Debtor cites *In Re Garcia*, 2015 Bankruptcy PR, citing *In Re Till* 541 US 465 124 S Ct. 1951 (2004); and *In re Ibarra*, 44 235 BR 204 (Bankr. DPR 1999).

reviewing Schedule J submitted in support of the *Amended Chapter 13 Plan*, which demonstrates the limited income that Debtor will have to subsist. See Schedule J, Expenses.

11. Third, Debtor's proposed plan and objection/modification fails to account for the pre-petition mortgage interest in arrears, amounting to approximately \$53,022.06, up to the filing date. Those arrears were due on the filing date of the petition and are not being covered by the *Amended Chapter 13 Plan*, nor the proposed modification. As such, Banco Popular's secured interest in such pre-petition interests need to be covered in any proposed payment plan.

12. Fourth, the amortization table submitted by Debtor fails to consider the pre-petition interests already due on the mortgage security, in addition to the principal, because of the non-payment for a period of at least 105 months.

13. As a result, Banco Popular hereby objects to the confirmation of Debtor's *Amended Chapter 13 Payment Plan* until it provides for Banco Popular's secured interest in Debtor's property.

WHEREFORE, Banco Popular respectfully requests from this Honorable Court that is take notice of its response to the *Debtor's Objection to Proof of Claim No. 7* and its objection to the confirmation of the *Amended Chapter 13 Payment Plan*.

NOTICE

Within thirty (30) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the clerk's office of the United States Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the objection will be deemed unopposed and may be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the court, the interest of justice requires otherwise. If you file a timely response, the court may schedule a hearing.

I HEREBY CERTIFY: That on this same date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF SYSTEM which will send notification

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of the present filing to the parties in this case registered in said system and by regular mail to non-CM/ECF participants.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this, the 29th day of October 2021.

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